

A Tengku Ali ibni Almarhum Sultan Ismail v Kerajaan Negeri Terengganu Darul Iman

**B HIGH COURT (KUALA TERENGGANU) — CIVIL SUIT NO 21-52-1992
IDRIS YUSOFF J
5 DECEMBER 1993**

Civil Procedure — Appearance — Unconditional appearance — Effect — Whether defendant precluded from raising defence of court's lack of jurisdiction

C Civil Procedure — Pleadings — Striking out — Delay in filing application to strike out — Whether detrimental

Civil Procedure — Jurisdiction of court — Declaration that plaintiff was former ruler — Whether justiciable

D Civil Procedure — Pleadings — Limitation — Whether limitation under the Public Authorities Protection Act 1948 has to be specifically pleaded — Public Authorities Protection Act 1948 — Rules of the High Court 1980 O 18 r 18(1)

E The plaintiff sought a declaration that he was the Sultan of the State of Terengganu from 26 September 1942 to 5 November 1945 and consequently, that he be paid a life allowance of RM1,500 a month to take effect from November 1945 with whatever arrears due to him together with a suitable residence befitting his station in life as an ex-ruler as provided for under the provisions of Ch 18 of the Laws of the Constitution of Terengganu 1911 ('the 1911 Constitution'). The defendant applied to strike out the claim pursuant to O 18 r 19(i)(a) of the Rules of the High Court 1980 ('the RHC') on the grounds that:

F (i) the matters complained of were not justiciable; (ii) the court had no jurisdiction to entertain the action; (iii) the plaintiff was not entitled to the relief claimed; (iv) the plaintiff's claim was barred by the Limitation Act 1953; and (v) the claim did not disclose a reasonable cause of action.

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Held, dismissing the defendant's application:

(1) By filing an unconditional appearance to the suit, the defendant was precluded from raising the issue of the court's lack of jurisdiction. A host of authorities shows that if the defendant is mindful of challenging the jurisdiction of the court, he is to enter a conditional appearance as opposed to an unconditional one, which would be followed by some form of application to have the suit set aside. The method adopted by the defendant in this case was clearly tantamount to a submission to the jurisdiction of the court.

(2) Although O 18 r 19 states that the application for striking out the pleadings can be made at any stage of the proceedings, the court would still want such application to be made promptly. The application to strike out was dated 7 January 1993, which is quite

- a lapse of time, considering the statement of defence was dated 2 June 1992. Such a delay was detrimental to the defendant's application since the defendant at all times had access to the services of its legal adviser who should have been aware of the alleged irregularity at the very outset. A
- (3) If the plaintiff's claim was that he is the rightful ruler or that he should be reinstated, then it may come within the role of the Jumaah Pangkuan Negeri as embodied in art 6 of the 1911 Constitution (2nd Part). However, the matter in issue was for a declaration that the plaintiff was the ruler of the State of Terengganu from 24 September 1942 to 5 November 1945 and only the High Court or the Supreme Court could grant such a declaration. There were no legal impediments for the court to adjudicate upon the claims of the plaintiff and the plaintiff's claims were justiciable and within the jurisdiction of the court. B C
- (4) The Kerajaan Negeri Terengganu Darul Iman had been correctly cited as the defendant since the claim was for a life allowance from the revenues of the country and which revenues go to the Consolidated Fund of the defendant. D
- (5) The defendant's amended statement of defence merely stated the Limitation Act 1953 and it was only in the submissions that the question of limitation under s 2 of the Public Authorities Protection Act 1948 was invoked for the first time. Even though the Public Authorities Protection Act 1948 is silent on the need to plead the Act as a defence, if a party intends to rely upon the Act as a defence, the Act must be specially pleaded. The point of law on limitation must always be raised by an express plea as required under O 18 r 8(1) of the Rules of the High Court 1980. Therefore, if the defendant was mindful of pursuing the defence of limitation, it was at liberty to do so within the frame work of the Limitation Act 1953. E F

[Bahasa Malaysia summary]

Plaintiff memohon suatu deklarasi bahawa beliau merupakan Sultan Negeri Terengganu dari 26 September 1942 ke 5 November 1945 dan oleh itu, supaya beliau dibayar suatu elaun seumur hidup sebanyak RM1,500 sebulan dari November 1945 dengan tunggakan yang kena dibayar kepadanya bersama dengan suatu kediaman yang bersesuaian dengan taraf hidupnya sebagai seorang bekas pemerintah seperti yang diperuntukkan di bawah peruntukan Bab 18 Undang-Undang Perlembagaan Terengganu 1911 ('Perlembagaan 1911 itu'). Defendan telah memohon untuk membatalkan tuntutan itu di bawah A 18 k 19(i)(a) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas dasar bahawa: (i) aduan mengenai perkara itu tidak boleh berjustifikasi; (ii) mahkamah tidak mempunyai bidang kuasa untuk melayani tindakan itu; (iii) plaintiff tidak berhak mendapat relief yang dituntut; (iv) tuntutan plaintiff dihalang oleh Akta Had Masa 1953; dan (v) tuntutan itu tidak mendedahkan suatu kausa tindakan yang munasabah. G H I

- A** **Diputuskan**, menolak permohonan defendan:
- (1) Dengan memfailkan kehadiran tanpa syarat, defendan dihalang daripada menimbulkan isu mengenai ketiadaan bidang kuasa mahkamah. Terdapat banyak autoriti yang menunjukkan bahawa jika defendan bertujuan mencabar bidang kuasa mahkamah, beliau mesti memasukkan kehadiran bersyarat dan bukan tanpa syarat,
- B** yang akan diikuti dengan sesuatu jenis permohonan untuk mengetepikan guaman itu. Cara yang digunakan oleh defendan di dalam kes ini jelas sama seperti suatu penyerahan kepada bidang kuasa mahkamah.
- (2) Walaupun A 18 k 19 menyatakan bahawa permohonan untuk membatalkan pliding boleh dibuat pada mana-mana peringkat prosiding, mahkamah masih menghendaki permohonan itu dibuat dengan segera. Permohonan untuk membatalkan prosiding itu bertarikh 7 Januari 1993, yang merupakan suatu selang masa yang agak panjang, memandangkan bahawa pernyataan pembelaan itu bertarikh 2 Jun 1992. Kelengahan sedemikian menjejaskan permohonan defendan kerana defendan pada setiap masa mempunyai akses kepada perkhidmatan penasihat undang-undangnya yang sepatutnya sedar akan luar aturan yang dikatakan itu daripada permulaannya lagi.
- C** (3) Jika tuntutan plaintif adalah bahawa beliau merupakan pemerintah yang sah atau bahawa beliau harus dikembalikan ke takhtanya, ianya mungkin termasuk dalam peranan Jumaah Pangkuan Negeri seperti yang terkandung di dalam perkara 6 Perlembagaan 1911 itu (Bah 2). Bagaimanapun, perkara yang menjadi isu adalah deklarasi bahawa plaintif merupakan pemerintah Negeri Terengganu dari 24 September 1942 hingga 5 November 1945 dan hanya Mahkamah Tinggi atau Mahkamah Agung sahaja yang boleh memberikan suatu deklarasi demikian. Tidak terdapat halangan undang-undang untuk mahkamah menghakimi tuntutan plaintif dan tuntutan plaintif boleh diadili dan terletak di dalam bidang kuasa mahkamah.
- D** (4) Kerajaan Negeri Terengganu Darul Iman telah dinamakan sebagai defendan dengan betul kerana tuntutan itu adalah untuk suatu elaun seumur hidup daripada hasil negara yang dimasukkan ke dalam Kumpulan Wang Disatukan defendan.
- E** (5) Pernyataan pembelaan defendan yang dipinda hanya menyatakan Akta Had Masa 1953 dan hanya di dalam penghujahan barulah soalan mengenai had masa di bawah s 2 Akta Perlindungan Pihak Berkuasa Awam 1948 telah digunakan untuk kali pertamanya. Walaupun Akta Perlindungan Pihak Berkuasa Awam 1948 tidak menyebut tentang keperluan menyatakan Akta itu sebagai suatu pembelaan di dalam pliding, jika sesuatu pihak ingin bergantung kepada Akta itu sebagai suatu pembelaan, Akta itu mesti dinyatakan di dalam pliding secara khas. Perkara undang-undang mengenai had masa mesti selalunya ditimbulkan sebagai suatu pli nyata seperti yang diperlukan di bawah A 18 k 8(1) Kaedah-Kaedah
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Mahkamah Tinggi 1980. Oleh itu, jika defendan bertujuan untuk meneruskan dengan pembelaannya mengenai had masa, ia bebas berbuat demikian di dalam lingkungan Akta Had Masa 1953.]

[*Editorial Note*: The defendant had appealed to the Supreme Court vide Civil Appeal No 01-71-93.]

Notes

For cases on the effect of entering unconditional appearance, see 2 *Mallal's Digest* (4th Ed) paras 490-491.

For cases on the need to plead limitation, see 2 *Mallal's Digest* (4th Ed) paras 1748-1749.

Cases referred to

- 1 *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (distd)
- 2 *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 293 (distd)
- 3 *Yew Bon Tew & Anor v Kenderaan Bas Mara* [1983] 1 MLJ 1 (refd)
- 4 *Lee Ah Chor v Southern Bank Bhd* [1991] 1 MLJ 428 (folld)
- 5 *The Chartered Bank v Yong Chan* [1974] 1 MLJ 157 (folld)
- 6 *Ronex Properties Ltd v John Laing Construction Ltd & Ors* [1982] 3 All ER 961; [1983] QB 398; [1982] 3 WLR 875 (folld)
- 7 *Yeo Chu Hui v Lim Cheng Jin & Anor* [1993] 1 AMR 18:745

Legislation referred to

Rules of the High Court 1980 O 18 r 8(1)

Mura Raju (*Dato' Sivasubramaniam* with him) (*Mura Raju & Co*) for the plaintiff.

G Sri Ram (*Idrus bin Harun*, Penasihat Undang-Undang Negeri Terengganu, with him) (*Sri Ram & Co*) for the defendant.

Idris Yusoff J: The defendant, Kerajaan Negeri Terengganu Darul Iman, by a summons-in-chambers applied to the court for an order to strike out the claim of the plaintiff seeking primarily for a declaration that he was the Sultan of the State of Terengganu for the period 26 September 1942 to 5 November 1945. The application is made pursuant to O 18 r 19(i)(a) of the Rules of the High Court 1980 ('the RHC').

The grounds on which the defendant relies to strike out the plaintiff's claim are that the matters complained of are not justiciable and the court in any event has no jurisdiction to entertain the action and, alternatively the plaintiff is not entitled to the relief claimed. Additionally, the defendant contends that the plaintiff's claim is barred by Limitation Act 1953, and lastly, the claim does not disclose a reasonable cause of action against the defendant.

A look at the plaintiff's statement of claim shows that what he is asking for is a declaration that he was the Sultan of Terengganu during the period

A aforesaid, and as a consequence thereof, he be paid a life allowance of RM1,500 a month to take effect from November 1945 with whatever arrears due to him together with a suitable residence befitting his station in life as an ex-ruler as provided for under the provisions of Ch 18 of the Laws of the Constitution of Terengganu 1911 ('the 1911 Constitution').

B On an application to strike out the pleading under O 18 r 19, it has often been said that since the exercise of such power is a drastic one, it follows that whenever triable issues of fact and law have been raised the summary jurisdiction of the court under this rule or under its inherent jurisdiction should not be invoked. It is only in plain and obvious cases that recourse should be had to the summary procedure under this rule, ie in cases where
C the statement of claim really discloses no cause of action — see *Mallal's Supreme Court Practice* (2nd Ed) paras 18/19/1–2.

It is indeed the law and is so submitted by the defendant's counsel that in an application relying upon O 18 r 19(i)(a), the court has to confine its scrutiny to the pleading sought to be struck out and not to undertake the scrutiny of the evidence.

D Counsel for the defendant makes a rather interesting submission on the question of jurisdiction of the court and the justiciability of a complaint contained in the statement of claim which question, he says, can be raised at any time even on appeal though not taken before the trial court. He maintains that if there is another body established by law which would be
E more competent to deal with such matter, the court ought to refuse whatever remedies sought on the ground of forum *non conveniens* — not that the court would declare that it has no jurisdiction, but that it merely refuses to exercise it as it is felt that the claim would suitably be dealt with elsewhere. A number of authorities are relied upon by him and to quote a few are *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus*¹
F and *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib*.² It is to be noted from the foregoing that there is a slight shift in the stance now adopted by the defendant when compared to the application, wherein it is contended that the court has *no jurisdiction* to deal with the matter of this nature.

G The plaintiff, on the other hand, argues that by filing an unconditional appearance to the suit, the defendant is precluded from raising this ground anymore. I must say with respect that I entirely agree with the plaintiff's contention as the law on this point is well settled. A host of authorities show that if the defendant is mindful of challenging the jurisdiction of the court he is to enter a conditional appearance as opposed to an unconditional one,
H which would be followed by some form of application to have the suit set aside. The method adopted by the defendant in this case is clearly tantamount to a submission to the jurisdiction of the court.

I Although under O 18 r 19 it states that the application for striking out the pleadings can be made at any stage of the proceedings, the court would still want such application to be made promptly. Looking at the application, it was dated 7 January 1993 which can be regarded as quite a lapse of time considering the statement of defence was dated 2 June 1992. This was followed by the defendant's application on 17 July 1992 to have the suit

transferred from the High Court at Kuantan to this court. A summons for directions was taken out by the plaintiff, and was followed by an application by the defendant to amend the defence. In the event, it is urged upon this court that such a delay should be construed as being detrimental to the defendant's present application since the defendant at all times had access to the services of its legal adviser who should have been aware of the alleged irregularity at the very outset.

Turning to the question of justiciability, what the plaintiff says [is that] he is not claiming that he, presently, is the rightful ruler or that he should be reinstated. If that be his claim, I tend to agree that it may come within the role of Jumaah Pangkuan Negeri as embodied in art 6 of the 1911 Constitution (2nd Part) and the submissions advanced by the defendant would be tenable. As submitted by the plaintiff, the matter in issue is for a declaration that he, the plaintiff, *was* the ruler of the State of Terengganu from 24 September 1942 to 5 November 1945 and only the High Court or the Supreme Court can grant such a declaration. And further, if the declaration is granted in the plaintiff's favour, his further and main claim is for whatever entitlements that may be due to him under Ch 18 of the 1911 Constitution. Such matters are not stipulated to be within the powers of Jumaah Pangkuan Negeri. For myself I say that the submission is in line with the law and that the two authorities relied upon by the defendant are, to say the least, distinguishable and not for application to the instant case and on this ground, I see no legal impediments for this court to adjudicate upon the claims of the plaintiff. The Kerajaan Negeri Terengganu Darul Iman has been correctly cited as the defendant since the claim is for a life allowance 'from the revenues of the country' and which revenues go to the Consolidated Fund of the defendant.

The defendant also claims that the plaintiff has not established any cause of action even assuming that all the matters set out in the statement of claim are accurate. The complaints are not justiciable and the court should not take cognizance of the suit.

On behalf of the plaintiff, it is argued that the effect of O 15 r 16 of the RHC is that an action for a declaration lies even though the plaintiff cannot establish a cause of action in the strict sense of the term, as the intention is to empower the court to make binding declarations of right, whether there is a cause of action or not — see 37 *Halsbury's Law of England* (4th Ed) at para 252.

The power to make a binding declaration of right is a discretionary one. And the power to make a declaratory judgment 'is confined to matters which are justiciable in the courts and the binding declaration which it can make must be a declaration as to legal or equitable rights and not moral, social, or political matters' — see *The Supreme Court Practice 1985* (The White Book). But the court has no jurisdiction to make a declaration in a matter in which exclusive jurisdiction is given to another tribunal. However as I have already held that the plaintiff's claims are justiciable I therefore rule that the defendant's contention on this point fails.

Finally, there is the question of limitation which, according to the defendant, places a bar to the plaintiff's claim. According to the statement

- A of claim, the complaints relate to events that transpired in 1945 whereas the writ in this action was only filed in 1992. Relying on s 2 of the Public Authorities Protection Act 1948, the defendant says that the action should have been brought within 12 months of the accrual of the cause of action (though the period of 12 months has been extended to 36 months effective 13 June 1974, the extension has no retrospective effect — *Yew Bon Tew & Anor v Kenderaan Bas Mara*³). It is further submitted by the defendant that although the limitation under the Public Authorities Protection Act 1948 has not been pleaded in the amended defence, there is no prohibition against the defendant raising this issue upon its summons, unlike s 4 of Limitation Act 1953 which makes it mandatory for such defence to be expressly pleaded.
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- D Even though the Public Authorities Protection Act 1948 is silent on the need to plead the Act as a defence, to my mind, if a party intends to rely upon any section of the Act as a defence, the Act or the section of the Act must be specially pleaded. The point of law on limitation must always be raised by an express plea. This is so required under O 18 r 8(1) of the Rules of the High Court 1980. The said r 8(1) says:

8(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality —

- E (a) which he alleges makes any claim or defence of the opposite party not maintainable; or ...

- F It is noted from the amended statement of defence that the question of limitation was in fact raised, wherein stated that the claim of the plaintiff was not maintainable since it was not filed within the period of limitation as allowed by s 6 of the Limitation Act 1953. Again it is observed in the instant application, one of the grounds relied upon by the defendant is that the plaintiff's claim is statute-barred under the Limitation Act 1953. It is only in the submissions that for the first time the question of limitation under s 2 of the Public Authorities Protection Act 1948 is invoked. In the event, ought the court to take cognizance of this defence when the provisions of these two laws are materially different though both deal with the issue of limitation — more especially when the defence of limitation under the Limitation Act 1953, in certain respects, is subject to exceptions, for instance a fresh accrual of right of action, existence of fraud or mistake which inevitably would require consideration of certain evidence and which evidence is unfortunately not admissible in an application of the nature relied upon by the defendant. On my part, I would say that if the defendant is mindful of pursuing the defence of limitation, it is at liberty to do so within the frame work of the Limitation Act 1953.
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- I On the question of issues which are not pleaded, I think I need only refer to Supreme Court's decision in *Lee Ah Chor v Southern Bank Bhd*⁴ which, after considering a number of authorities, concluded at p 291:

It does not seem necessary for us to emphasize and repeat the importance of pleadings in a civil suit castigating observations on which had been made from time to time in many cases in our courts. It is only a question of whether counsel,

either because of negligence, inadvertence or call it what you will, choose to pay them scant or no heed at all and we must say that they do so at their peril. Recently, lapses in the strict compliance with the rules of pleadings occurred in our courts with marked frequency and we do not see how such lapses in the courts should be tolerated at the expense of the clients.

The judgment of Raja Azlan Shah FJ (as his Majesty then was) in *The Chartered Bank v Yong Chan*⁵ was also referred to wherein His Lordship said at p 159:

In my opinion the pleadings in the statement of claim are not in ideal form. If we are to maintain a high standard in our trial system, it is indubitably not to treat reliance upon forms of pleadings a pedantry or mere formalism.

In the circumstances and on the authorities, I hold that the defence under the Public Authorities Protection Act 1948 at least at this juncture, is not available to the defendant.

Adverting to the question of limitation under the Limitation Act 1953, the English Court of Appeal held in *Ronex Properties Ltd v John Laing Construction Ltd & Ors*⁶ that 'since statutes of limitations merely barred a plaintiff's remedy and not his cause of action, and since a limitation defence when pleaded might be subject to exceptions, a defendant could never apply under RSC O 18 r 19 to strike out a claim against him as disclosing no reasonable cause of action merely because he might have a good limitation defence'. This decision found favour with Abdul Malek J in *Yeo Chu Hui v Lim Cheng Jin & Anor*⁷ when dealing with Limitation Act 1953 and I see no reason to disagree with him.

Accordingly I hold that the claims of the plaintiff are justiciable and are within the jurisdiction of the court to adjudicate. I therefore dismiss the defendant's application with costs.

Application dismissed.

Reported by Anne Khoo

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